

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9237 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

NITIN @ KARA KARSANBHAI MOTIVARAS

Versus

DISTRICT MAGISTRATE

Appearance:

MR YOGESH S LAKHANI for Petitioner

MR ND GOHIL AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 10/03/2000

ORAL JUDGEMENT

Heard the learned advocates.

2. The petitioner challenges the Order of preventive detention dated 21st August, 1999 made against him by the

District Magistrate, Porbandar under the powers conferred upon him under Sub-section 1 of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as, 'the Act'].

3. Alongwith the order of detention, the petitioner was served with the grounds of detention also. The petitioner is held to be a 'bootlegger' within the meaning of Section 2 (b) of the Act and his activities are found to be prejudicial to the maintenance of 'public order'. It appears that as many as three prohibition offences are registered against the petitioner and are pending trial/investigation. In each of the said cases, a large quantity of English Liquor was found in possession of the petitioner. Besides, three persons on assurance of anonymity, have given statements in respect of the anti-social activities of the petitioner and its adverse effect on the even tempo of life and the public tranquillity. The detaining authority having examined the materials before it has stated that the said persons had given statements on assurance of anonymity and the genuineness of the apprehension voiced by the witnesses was personally verified by the detaining authority. Under the powers conferred upon the detaining under Section 9(2) of the Act, the names and other details of the witnesses have been withheld. It is further stated that there being no previous conviction against the petitioner, the petitioner could not be ordered to be externed from the area in exercise of the powers conferred by Section 57 (c) of the Bombay Police Act, 1951.

4. It is contended that though the Detaining Authority has considered externment of the petitioner under Section 57 (c) of the Bombay Police Act, 1951, he has not considered the possibility of removing the petitioner from the concerned area under Section 56 of the Bombay Police Act, 1951. Besides, though the detaining authority has recorded subjective satisfaction in respect of the genuineness of the apprehension voiced by the witnesses, the same is not supported by the relevant materials. The supporting materials do not disclose that the witnesses were summoned by the detaining authority or were questioned by him. Besides, there is no reply to the petition indicating the manner in which the detaining authority could have satisfied himself regarding genuineness of the apprehension voiced by the witnesses. In above view of the matter, the order of detention is unwarranted and requires to be quashed and set-aside.

5. Both the contentions raised by Mr. Gondalia require to be accepted. It is undoubtedly true that the detaining authority has not considered the possibility of removing the petitioner from the area in exercise of powers conferred upon him by Section 56 of the Bombay Police Act. The subjective satisfaction recorded in respect of the apprehension voiced by the witnesses is also not supported by the relevant materials. Nor the detaining authority has made a counter affidavit indicating that he did, in fact, satisfy himself in respect of the genuineness of the apprehension voiced by the petitioner. In either case, the order of detention suffers from the vice of non-application of mind and is required to be held to be illegal and void.

6. Accordingly, the petition is allowed. The impugned order dated 21st August, 1999 is quashed and set-aside. The petitioner, unless is required to be detained in some other case, be released forthwith. Rule is made absolute. There shall be no order as to costs.

Prakash*